

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

FILED

APR 29 2005

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

UNITED STATES OF AMERICA)
ex rel. [UNDER SEAL],)
)
Plaintiffs,)
)
v.)
)
[UNDER SEAL],)
)
Defendants.)

CIVIL ACTION NO. MO-04-CA-095-RJ

FILED UNDER SEAL AND
IN CAMERA

UNITED STATES' ELECTION TO DECLINE INTERVENTION

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." Id.

Therefore, the United States requests that, should either the relator or the defendant propose that this action be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States before ruling or granting its approval. This includes any proposed dismissal prior to service of process on the defendants.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings, motions and other papers filed in this action be served upon the United States; the United States also requests that orders issued by the Court and deposition notices served by any party on

any witness or party be sent to the Government's counsel. The United States reserves its right to order any deposition transcripts and to intervene in this action, for good cause, at a later date.

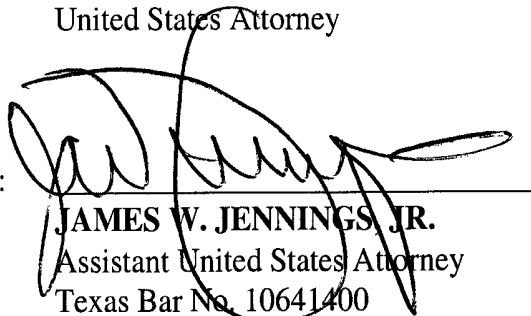
Finally, the United States advises the Court that 31 U.S.C. § 3730 requests that only the complaint, this notice, and the Court's Order be unsealed and served upon the defendants. All other contents of the Court's file in this matter should remain under seal and not be made public or served upon the defendant.

A proposed order accompanies this notice.

Respectfully submitted,

JOHNNY SUTTON
United States Attorney

By:

A handwritten signature in black ink, appearing to read 'James W. Jennings, Jr.', is written over a horizontal line. The signature is stylized with large, sweeping loops.

JAMES W. JENNINGS, JR.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing United States' Notice of Election to Decline Intervention and proposed Order (filed in camera and under seal) has been mailed, via certified, return receipt requested mail, on this 27TH day of April 27, 2005, addressed as follows:

GERALD K. FUGIT, P.C.
Attorney at Law
412 North Texas Avenue
Odessa, Texas 79761

(Attorney for Relator)



JAMES W. JENNINGS, JR.
Assistant United States Attorney